

AMENDMENT NUMBER ONE
TO AN AGREEMENT
BETWEEN THE CITY OF FRISCO, TEXAS (CITY)
AND
BILL AND MARY BUCHEN (DBA)
SON ARC INC. (ARTIST)
FOR
THE FABRICATION AND INSTALLATION OF THE PROPOSED
"PRAIRIE BELLS" for
(PRESTON ROAD, PHASE 2 PROJECT) (PROJECT)

Made as of the 17 day of February in the year Two Thousand Nine:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 731-4945

and the Artist: Bill ad Mary Buchen (DBA)
Son Arc Inc.
223 East 2nd Street
New York, NY 10009
Telephone:(212) 982-1743
Facsimile:

for the following Project: Fabrication and Installation of the proposed "Prairie Bells" for
Preston Road, Phase 2.

The City and Artist agree as set forth below:

THIS AMENDMENT NUMBER ONE is made and entered by and between the City of Frisco, Texas, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and Son Arc Inc., hereinafter referred to as "Artist," to be effective from and after the date as provided herein the "Amendment Number One."

WHEREAS, the City and Artist entered into that certain Agreement for professional artist services to fabricate and install the proposed "Prairie Bells" submitted for the Preston Road, Phase 2 public art competition in May, 2005, hereinafter referred to as "Project;" and

WHEREAS, the City and Artist desire to amend the Agreement for the purpose of cancelling the Artist's installation requirements and amending the amount of compensation for Artist's services (defined in the Agreement) and to amend the Completion Schedule/Project Billing/Project Budget accordingly; and

WHEREAS, the City and Artist desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Artist do mutually agree as follows:

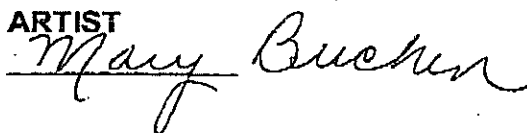
1. **Installation.** City and Artist agree that this Amendment Number One amends the Agreement for the purpose of, among other things, the cancellation of the Artist's installation requirements and amendment to the amount of compensation for the Artist's services, as more particularly described in the following Exhibits "A" and "B", attached hereto and incorporated herein for all purposes:
 - a) **3.1 Compensation of Services.** As described in "Article 1, Artist's Services", compensation for this Project shall be sixty eight thousand dollars and no cents (\$68,000.00) ("Artists' Fee") and will cover all services to be rendered and materials to be provided in accordance with this Agreement. The Artists' Fee shall be paid in accordance with Article 3 and the Completion Schedule/Project Billing/Project Budget as set forth in Exhibit "B", attached hereto. The final payment of the Artist's Fee, or three thousand five hundred seventy dollars (\$3,570.00) shall not be paid until the Artist has completed and delivered all of the Artwork services and tasks described in Exhibits "A" and "B", attached hereto.
 - b) **Exhibit "A,"** Amended Scope of Services, dated December 21st, 2007.
 - c) **Exhibit "B,"** Amended Completion Schedule/Project Billing/Project Budget, dated December 21st, 2007.
2. **Complete Agreement.** This Amendment Number One, including the exhibits attached hereto labeled "A" through "B," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended,

supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "A-B" are attached hereto and made a part of the Agreement and this Amendment Number One.

3. **Counterparts.** This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.
4. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.
5. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.
6. **Authority to Execute.** The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.
7. **Entire Agreement / Amendment Number One.** This Amendment Number One, and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or arrangements between the parties regarding the subject matter hereof.
8. **Venue.** The Agreement and Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
9. **Assignment.** This Amendment Number One may not be assigned except as authorized in the Agreement.

IN WITNESS HEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

CITY
The City of Frisco, Texas

ARTIST


By: _____
George Purefoy
Title: City Manager

By: Mary Buchen
Name
Title: Secretary/Treasurer

APPROVED AS TO FORM:

Abernathy, Roeder, Boyd and Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2009.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF NEW YORK:

COUNTY OF Queens:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF NEW YORK, ON THIS DAY PERSONALLY APPEARED **BILL BUCHEN**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 17th DAY OF Feb, 2009.

In presence of Buchen, Mary K.

ROKSANA JESMIN
Notary Public, State of New York
No. 01JE6189080
Qualified in Queens County
Commission Expires June 23, 2012

NOTARY PUBLIC IN AND FOR THE STATE OF NEW YORK

My commission expires: June 23, 2012

EXHIBIT "A"
SCOPE OF ADDITIONAL SERVICES, DATED _____

**Amendment Number One to Agreement by and between
the City of Frisco, Texas (City) and Bill and Mary Buchen, dba Son Arc Inc. (Artist)
for the fabrication and installation of the proposed "Prairie Bells" for the Preston
Road , Phase 2 Project (Project)**

Project Description.

"... "Prairie Bells" celebrates the rolling tall grass Blackland prairie that the City of Frisco sprang from and commemorates each year since its founding in 1902. Rising from a prairie landscape, the conical lattice tower shimmers with dancing prismatic wind bells; each marking one year of Frisco's first 100 years. Wind responsive vanes cast multi-colored reflections like darting butterflies. At the tower apex, a Wind Twister spirals upward, and at night the sculpture is uplit. Prairie habitats remain as vital to Frisco's future environmental conservation as to its past. Prairie Bells invites the public to explore the grasses and native plants identified by etched markers. The artists will collaborate with the landscape architect in designing the prairie environment around the piece.

Fabrication/Installation

- Bell Tree – welded stainless steel pipe and tensioned cable construction
- Wind Twister – formed and welded stainless steel, sealed weatherproof lifetime bearing
- Wind bells/vanes – bronze bells with prismatic or dichroic vanes. Surplus Wind Bells/Vanes for replacement as needed to be stored with Public Art Program staff.
- Landscaping: native prairie grasses and flowers installed by landscape architect

To fabricate the proposed "Prairie Bells" for the Preston Road, Phase 2 project, Son Arc will perform the following tasks:

A) Following a site visit, submit final schematic drawings of the proposal based upon submitted maquette, to City staff and the Public Art Board for their review and approval within 60 days of the receipt of this agreement. These drawings will include:

- Detailed information of every physical feature of the construction of the Artwork and its integration with the site, with any proposed changes to the previously submitted concept highlighted. (Final Design).
- A description of any issues involved in the construction, integration and maintenance of the Artwork, as well as any third party subcontractors needed to work on the project.
- A final project budget breakdown not to exceed \$68,000.00.

B) Following formal approval of the Public Art Board, the Artist shall submit drawings stamped by an engineer, licensed by the State of Texas and paid for by the Artist, for certification that the Artwork, foundation, and its connection will be structurally sound.

EXHIBIT "A"
SCOPE OF ADDITIONAL SERVICES, DATED _____

C) The Artist shall fabricate the Artwork in substantial conformity with the approved design. Any significant changes in the concept, as defined in Article 5.2, must be approved by the City. It is the responsibility of the City to coordinate with the Project Landscape Architect, and Contractor to ensure that the site is prepared to receive the Artwork. The City will be responsible for final installation, preparation of the site, including installation of the foundation and lighting.

D) Upon completion and delivery to storage, the City project manager will inspect the work and give notice of acceptance, as provided in this Agreement. The Artist will complete the City's maintenance worksheet and submit it to the City within ten (10) days of City's final acceptance of the Artwork."

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET
FOR ADDITIONAL SERVICES, DATED _____

**Amendment Number One to Agreement by and between
the City of Frisco, Texas (City) and Bill and Mary Buchen, dba Son Arc Inc. (Artist)
to fabricate and install the proposed "Prairie Bells" submitted for the
Preston Road, Phase 2 Project (Project)**

COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

TASK	DESCRIPTION	PAYMENT	TIMELINE
1	Execution of Agreement and Notice to Proceed. Insurance documentation sent to City.	\$16,107.50	1/2008
2	Submit final design and budget breakdown for approval to City Staff and Public Art Board.	\$16,107.50	3/2008
3	Stamped engineered drawings submitted.	\$16,107.50	8/2008
	50% completion	\$16,107.50	8/2008
4	Delivered to the City for storage, final acceptance by project manager, submit maintenance worksheets.	\$3,570.00	10/2008
TOTAL		\$68,000.00	